

\*E-FILED - 3/2/07\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA.

Plaintiff,

V.

CLIFFINA JOHNSON,

Defendant.

No. C-04-03340-RMW  
No. C-05-03721-RMW

*Related to: CR-99-20092-RMW*

## ORDERS RE MOTIONS UNDER 28 U.S.C. § 2255

Movant Cliffina Johnson was sentenced on January 24, 2001 for her conviction for conspiracy to bribe a public official and bribery of a public official. She, as a *pro se* litigant, has filed two motions to attack her conviction and sentence under 28 U.S.C. § 2255; the first motion was filed on August 16, 2004 ("04 Motion") (case # C-04-03340) and the second on September 15, 2005 ("05 Motion") (case # C-05-03721). Both assert, among other claims, that the government failed to provide her with *Brady/Giglio* material pertaining to the government's primary prosecution witness, Clarence Walker. She specifically claims that on June 26, 2004 Walker was indicted for various offenses including structuring and bribery, and that she is informed and believes "that the investigation of Mr. Walker was on-going during the time period of (her) alleged actions." '04 Motion ¶ 9. The court ordered the government to respond to the '04 motion and it did so on September 9, 2004. The court then ordered the government to file "declarations based upon first hand knowledge as to

ORDERS RE MOTIONS UNDER 28 U.S.C. § 2255  
NO. C-04-03340-RMW  
NO. C-05-03721-RMW

1 when the government first suspected Walker." Order dated September 9, 2004. Johnson  
 2 was given the opportunity to respond by filing "any information that suggests the  
 3 government suspected Walker of any wrongdoing before June 25, 2001." *Id.* In  
 4 accordance with the court's order, the government filed the declaration of Anthony  
 5 Armentano, the case agent in Walker's case, wherein Armentano states that an  
 6 investigation of Walker was commenced on June 27, 2001 based upon information  
 7 received on June 25, 2001. Johnson filed no response to Armentano's declaration.  
 8 Although a letter dated February 19, 2007 from Lupe Martinez, Johnson's trial counsel,  
 9 indicates that the '04 Motion was denied, the court finds no record of such denial.

10 No action has been taken on Johnson's '05 motion.

11 On October 4, 2006 Fred Shirley, Johnson's co-defendant, filed a similar motion  
 12 attacking his conviction and sentence (case # C-06-06276 RMW). He is represented by  
 13 attorney Suzanne Luban. The motion is pending.

14 Movant Johnson has requested that Lupe Martinez, a former federal public defender  
 15 now in private practice, be appointed to represent her. As noted, attorney Martinez was  
 16 Johnson's trial counsel. The court hereby appoints Attorney Martinez to represent  
 17 Johnson, subject to Johnson's waiver of any potential conflict in having her trial attorney  
 18 represent her in her § 2255 claims. The court finds the appointment justified by the  
 19 questions raised about Walker's status and its effect on his credibility and the potential  
 20 procedural hurdles if Johnson's initial '04 Motion was denied.

21 Johnson '05 motion is hereby dismissed as successive pursuant to 28 U.S.C. §  
 22 2255.

23 On January 19, 2007 Johnson filed "Cliffina Johnson's Joinder and Request for E-  
 24 Filing Status." E-filing status is hereby granted. The court denies without prejudice  
 25 Johnson's purported "joinder" with co-defendant Shirley's motion.

26 The court hereby sets a case management conference for March 30, 2007 at 10:30  
 27 a.m. Johnson is to file with the government a joint case management statement setting  
 28 forth what, if any, discovery is requested and whether an evidentiary hearing will be

1 needed. If the government has any record of Johnson's '04 Motion having been previously  
2 denied, it is to bring that fact to the court's attention.

3 All future filings in the pending '04 Motion should be made in case # 04-03340 RMW  
4 with a reference to the related criminal case # CR-99-20092.

5

6 DATED: March 2, 2007

*Ronald M. Whyte*

---

7  
8 RONALD M. WHYTE  
9 United States District Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Copy of Order E-Filed and Mailed on 3/2/07 to:

2 Lupe Martinez  
3564 Juergen Drive  
3 San Jose, CA 95121

4 Counsel for Cliffina Johnson

5 Cliffina Johnson  
745 Dutton Ave.  
6 San Leandro, CA 94577

7 Movant

8 Carlos Singh  
9 Assistant United States Attorney  
150 Almaden Blvd., Suite 900  
San Jose, CA 95113

10 Counsel for United States of America

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28